

STATE OF MICHIGAN
COURT OF APPEALS

In re Guardianship of WINNIE E. GRIFFIN.

TODD GRIFFIN, Guardian of WINNIE E.
GRIFFIN, LIP,

UNPUBLISHED
May 21, 2020

Petitioner-Appellant,
and

SHAWN GRIFFIN, Co-Guardian of WINNIE E.
GRIFFIN, LIP,

Other Party

v

TIFFANY PITTS and LISA ORLANDO,

Appellees.

No. 348544
Oakland Probate Court
LC No. 2018-383435-GA

Before: BECKERING, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Petitioner Todd Griffin appeals from an order requiring payment of court-appointed attorney fees. We reverse and remand for further proceedings consistent with this opinion.

I.

This case arises from an Adult Protective Services (APS) petition for guardianship of Winnie E. Griffin (“Griffin”). Griffin lives with her son, Todd Griffin, and his wife. APS’s petition filed in June 2018 claimed that Griffin has dementia, was being left unsupervised for several hours and was not taking her medications as prescribed. The petition nominated a professional guardian. The probate court appointed a guardian ad litem for Griffin, and the guardian ad litem later reported that the Griffin was contesting the petition and objected to the

appointment of the nominated guardian. In July 2018, Todd filed an objection to APS's petition and a competing petition nominating himself as guardian. Griffin signed the petition, requesting that Todd be appointed guardian should the court determine she required one. After a hearing on July 25, 2018, the probate court entered an order appointing Lisa Orlando as Griffin's attorney and released the guardian ad litem.

A contested guardianship hearing was held on November 19, 2018. Because APS was not represented by counsel, the probate court dismissed its petition and proceeded solely on Todd's petition. Griffin had retained counsel, Dorothy Dean, for the hearing. The probate court decided that Dean would be Griffin's "main counsel" and that Orlando would stay on as co-counsel. At the close of testimony, the probate court found that Griffin was a legally incapacitated person and required a guardian. The probate court appointed Todd and his brother Shawn as co-guardians. In the order of guardianship, the court released Orlando as appointed counsel and directed her to "bill the estate."

At the March 21, 2019 review hearing, Todd objected to paying Orlando's attorney fees. He asserted, in part, that his mother lacked funds to pay Orlando. The probate court rejected Todd's objection to paying Orlando's fees and entered an order requiring payment within 48 hours. Todd immediately filed a motion for reconsideration, arguing that payment of the \$1,050 bill Griffin received from Orlando would deplete Griffin's estate. Todd requested that the amount of attorney fees be reduced and that the probate court set up a payment plan. On March 27, 2019, the probate court entered an order denying petitioner's motion for reconsideration.

II.

Todd first contends that the probate court erroneously allowed Orlando to remain as Griffin's counsel at the contested guardianship hearing.¹ We agree.²

Guardianship proceedings for incapacitated individuals are governed by article V, part 3 of the Estates and Protected Individuals Code, MCL 700.5301 *et seq.* MCL 700.5305 states in pertinent part:

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular

¹ Todd refers to Orlando as the guardian ad litem. While the cover sheet for the hearing transcript identifies Orlando as Griffin's guardian ad litem, it is clear from the rest of the record that Orlando was appointed as Griffin's attorney.

² In general, we review a probate court's rulings for an abuse of discretion. See *In re Guardianship of Redd*, 321 Mich App 398, 403; 909 NW2d 289 (2017). Whether the probate court erred by allowing Orlando to remain as co-counsel at the contested guardianship hearing is unpreserved because this issue was not raised at the hearing. See *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014). For the reasons discussed, however, we conclude that the probate court plainly erred and that the error affected Griffin's substantial rights. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel. [MCL 700.5305(3).]

The probate court correctly appointed legal counsel pursuant to this statute because: (1) Griffin was contesting APS's petition, and (2) she did not have legal counsel. However, at the time of the contested guardianship hearing both of those conditions had been resolved. The probate court dismissed APS's petition and, more importantly, Griffin had retained counsel. Under those circumstances, the probate court lacked statutory authority to continue Orlando's appointment. As a result, there is no basis for requiring Griffin to pay Orlando's fees for services rendered at the hearing. The statute contemplates that the individual alleged to be incapacitated will pay one attorney, either one she retains or court-appointed counsel. Thus, it was plain error for the probate court to order payment of Orlando's fees that were incurred for services at the hearing. However, fees may be imposed against Griffin for Orlando's prehearing services because the appointment was proper during that time. On remand, the probate court shall determine a reasonable fee for Orlando's services rendered prior to the contested guardianship hearing.

We also agree with Todd, however, that Griffin is entitled to a determination of indigency before the probate court may order payment of the remaining fees. Again, MCL 700.5305(3) states, "If the individual alleged to be incapacitated is indigent, this state shall bear the expense of legal counsel." Ideally, a claim that Griffin could not afford payment of appointed counsel's fees would have been made earlier in the proceedings. On the other hand, it is understandable that this issue was not raised until after Todd received Orlando's bill. In any event, the issue was raised before the probate court and the statute is clear that the state must bear the expense of legal counsel if Griffin is indigent. Thus, Griffin is entitled to a determination on that matter before she can be compelled to pay Orlando's fees. The probate court abused its discretion by not addressing Griffin's ability to pay after Todd raised that issue. See *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016) ("A trial court necessarily abuses its discretion when it makes an error of law."). On remand, the probate court shall hold a hearing to determine whether Griffin is indigent.

Revered and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro